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In the

Supreme Court of the United States

OCTOBER TERM, 1960

No. 106

STATE OF ALASKA, *Petitioner*,
v.
ARCTIC MAID AND ARCTIC MAID FISHERIES, INC., *Respondent*.

STATE OF ALASKA, *Petitioner*,
v.
PACIFIC REEFER AND PACIFIC REEFER FISHERIES, *Respondent*.

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On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF RESPONDENTS

EVANS, MCLAREN, LANE, POWELL & BEEKS
MARTIN P. DETELS, JR.
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BRIEF OF RESPONDENTS

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The license tax statute held unconstitutional by the Court of Appeals was enacted by the Legislature of the Territory of Alaska, as Chapter 97, SLA (Session Laws of Alaska) 1949. Section 1 was amended by Chapter 116, SLA 1951, to increase the rate of tax upon freezer ships from 1% to 4%; and this litigation involves only tax years subsequent to that amendment. Chapter 116, SLA 1951 is correctly set forth at pp. 3-5 of Petitioner's Brief. Chapter 97, SLA 1949, as originally enacted, is set out in its entirety in Appendix A to this brief.

An understanding of Alaska's fisheries taxation program requires study of Chapter 82, SLA 1949, as amended by Chapter 113, SLA 1951, which imposed a license tax on salmon canneries and other processors, and Chapter 66, SLA 1949, which imposed a license tax on resident and non-resident fishermen.[1] The pertinent provisions of Chapter 82, SLA 1949 and Chapter 113, SLA 1951, are set forth as Appendices B and D, respectively, to Petitioner's Brief. Sections 1 and 2 of Chapter 66, SLA 1949 are set forth as Appendix B to this brief.

Each of these tax statutes has been amended or otherwise affected by enactments subsequent to the period involved in this cause. For convenience, the later history is footnoted.[2]

[1] Sec. 2 of Ch. 66, SLA 1949, was amended by Ch. 67, SLA 1953, to reduce the amount of tax levied upon non-resident fishermen from $50.00 to $10.00.

[2] Ch. 66, SLA 1949, as amended by Ch. 67, SLA 1953: § 2 further amend-

The Court of Appeals held Chapter 97, SLA 1949, as amended, repugnant to the Commerce Clause of the Federal Constitution, Art. I, § 8, cl. 3, which provides as follows:

> "The Congress shall have Power . . .;
> "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

This and other provisions of the Constitution, if not applicable to the former Territory of Alaska *ex proprio vigore*, were made applicable by The Organic Act of Alaska, Act of August 24, 1912, c. 387, § 3, 37 Stat. 512, 48 U.S.C. § 23,[3], which provided in pertinent part as follows:

> "That the Constitution of the United States, and all the laws thereof which are not locally inapplicable, shall have the same force and effect within the said Territory as elsewhere in the United States; . . ."

It is also relevant that The Organic Act placed restrictions upon the power of the Territorial Legislature over Alaska's fisheries:

> "Provided, That the authority herein granted to the legislature to alter, amend, modify, and re-

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ed by Ch. 98, SLA 1955; repealed by Ch. 97, Art. IV, § 1, SLA 1959, but see Art. III, § 6 of the same Act, imposing a similar tax, further amended by § 19, Ch. 131, SLA 1960.

Ch. 82, SLA 1949, as amended by Ch. 113, SLA 1951: See Ch. 190, SLA 1959.

Ch. 97, SLA 1949, as amended by Ch. 116, SLA 1951: § 1 amended by Ch. 102, SLA 1955. See also Ch. 190, SLA 1959.

[3] Presumably repealed by The Alaska Statehood Act, Act of July 7, 1958, 72 Stat. 339, § 30, 48 U.S.C.A. (1960 Supp.) p. 14.

peal laws in force in Alaska shall not extend to the . . . fish . . . laws of the United States applicable to Alaska, . . .: Provided, further, That this provision shall not operate to prevent the legislature from imposing other and additional taxes or licenses." Act of August 24, 1912, c. 387, § 3, 37 Stat. 512, 513, 48 U.S.C. § 24.

Twelve years later, Congress enacted the White Act, which conferred regulatory power over Alaska's fisheries upon the Secretary of Commerce (later the Secretary of the Interior), but provided that every regulation should be of general application within the area to which it applied, and that:

". . . nor shall any citizen of the United States be denied the right to take, prepare, cure or preserve fish or shellfish in any area of the waters of Alaska where fishing is permitted by the Secretary of the Interior." Act of June 6, 1924, c. 272, § 1, 43 Stat. 464, 465, as amended, 48 U.S.C. § 222.[4]

Respondents also challenged the constitutionality of Chapter 97, SLA 1949, as amended, in the courts below, as an attempt to tax activities outside the territorial jurisdiction of Alaska, in violation of the Due Process Clause of the Fifth and Fourteenth Amendments to the Federal Constitution, which provide in pertinent part as follows:

"No person shall . .. be deprived of life, liberty or property, without due process of law; . . ."

Amendment V.

[4] The functions of the Secretary of the Interior under the provisions of this Act were terminated and transferred to the State of Alaska by Executive Order No. 10857 of January 4, 1960, 25 F.R.3; 48 U.S.C.A.

"nor shall any State deprive any person of life, liberty or property without due process of law; ..."

Amendment XIV, § 1.

Respondents also contend the classification effected by Alaska's fisheries tax program violates the Equal Protection Clause of the Fourteenth Amendment (if, as respondents believe, the tax classification is not based upon residence) or (if so based) the Privileges and Immunities Clause of Art. IV, § 2, and the Fourteenth Amendment. The material provisions are as follows:

"The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

Art. IV, § 2.

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; .. .. nor deny to any person within its jurisdiction the equal protection of the laws."

Amendment XIV, § 1.

QUESTIONS PRESENTED

1. May Alaska impose a license tax, consistently with the Commerce Clause of the U.S. Constitution, Art. I, § 8, cl. 3, upon the privilege of engaging in the activity of freezing or storing a product after it has been loaded aboard a vessel on which it is to be trans-

(1960 Supp.) p. 34. The substantive right set forth above has not been repealed, unless the Alaska Omnibus Act, Act of June 25, 1959, § 3, 73 Stat. 141, effective June 30, 1961, has such effect.

ported in interstate commerce for later processing in another state?

2. May Alaska impose a license tax, consistently with the Commerce Clause, upon persons for the privilege of engaging in an activity essential to interstate shipment and later processing in another state while no tax is imposed upon persons for the privilege of engaging in the identical activity if the later processing is performed in Alaska?

STATEMENT OF THE CASE

Respondents submit that petitioner's three-paragraph treatment of the facts of the case is inadequate to present the issues to this Court.

Respondents, Pacific Reefer, Pacific Queen, Alaska Reefer, and North Star,[5] were at all material times partnerships and the owners and operators of vessels specially converted and equipped for operation as freezer ships. R. 37. All of the partners in these respondent partnerships were residents of the States of Washington or California and citizens of the United States, R. 42, and the port of registry of each vessel is Tacoma, Washington. App. 1 to Ex. 1,[6] R. 43.

Arctic Maid Fisheries, Inc. is a Washington corporation and was and is the owner and operator of the D/V ARCTIC MAID, a vessel similarly converted and

[5] For brevity and convenience, respondents are designated by the names of their respective vessels which, in each case, is a part of the partnership or corporate name.

[6] All exhibits referred to herein were incorporated in the record as part of Pl. Stip. No. 1, R. 32, or Def. Stip. No. 1, R. 55, which were admitted at R. 224.

equipped. The port of registry of the freezer ship ARCTIC MAID is Seattle, Washington. R. 37, 42; App. 1 to Ex. 1, R. 43.

Respondents are engaged in the business of operating freezer ships. Their activities may be summarized as follows: the acquisition of salmon (either by operation of owned gillnet "catcher" vessels manned by their employees or purchase from independent fishermen or fishermen who contract to deliver to respondents salmon caught by their own "catcher" vessels), loading, freezing, storage, transportation, canning and marketing of the salmon so obtained. R. 37-42.

Prior to the commencement of the salmon season and after preparation of the vessel for operations, respondents' vessels depart from their respective Puget Sound, Washington, home ports for Bristol Bay and other fishing areas off the coast of Alaska. The freezer ships are not equipped to and do not engage in any fishing. They serve as "mother" vessels for small fleets of gillnet "catcher" boats. Most of these "catcher" boats, 30 to 32 feet in length, are transported from Puget Sound to the fishing areas at the beginning of the season on the decks of their respective "mother" vessels and are returned to Puget Sound at the end of the season in the same manner. Ex. 1, R. 37-42.

Each "catcher" boat owned and operated by respondents was manned by two fishermen employed under the terms of a labor agreement between the salmon industry and the Alaska Fishermen's Union, as modified by a special addendum applicable to freezer ship operations. In outline, the respondents furnished

the "catcher" boat, its fuel and all gear, provided food and quarters aboard the "mother" vessel, paid a fixed sum as "run money" for the period in which the fishermen were aboard the freezer ship en route to or from the fishing area, provided air transportation in one direction from Seattle to the fishing areas, if desired, and paid the current seasonal price for all salmon caught and landed aboard the "mother" vessel by the fishermen. R. 38.

During the Bristol Bay red salmon season, respondents' vessels anchored seaward of a line drawn parallel to and at a distance of three miles from mean low tide mark on the shore of Bristol Bay and served as a base for the operations of their "catcher" boats. The Court of Appeals assumed for the purpose of considering the Commerce Clause that while so anchored, respondents' vessels were in territorial waters. It did not find it necessary to decide that question. 277 F.2d 120, 125, R. 388. The position of the vessels seaward of this line is dictated by the necessity for leaving an unimpeded area close to shore for the operation of the "catcher" boats and not by any consideration of tax consequences. R. 38-39.

At the beginning of each "open" fishing period authorized by the United States Fish & Wildlife Service, the "catcher" boats leave the "mother" freezer ships and proceed to the fishing grounds closer to shore to fish. After fishing is completed, the "catcher" vessel returns to the "mother" ship where the fish are tallied and transferred to the "mother" vessel by means of a net which is lowered from the "mother" ship to

the deck of the "catcher" boat. The net is then hoisted aboard the freezer ship and the salmon are dumped into permanently installed quick-freezing brine tanks, in which the salmon are frozen in a circulating brine solution, the temperature of which has been reduced by refrigeration to a point below the temperature at which the salmon become fully frozen, but at which the solution remains fluid because of its salinity.[7] Normally, the frozen salmon are then transferred by chutes, leading from traps in the bottom of the brine, to dry frozen storage compartments for storage and transportation, although in some instances the tanks themselves are used for that purpose. R. 39-41.

Some of the respondents have also obtained some salmon by purchase from fishermen who operate their own "catcher" vessels. Some of these fishermen are wholly independent, while others have entered into contracts with respondents for the delivery of all their catch to respondents' vessels.[8] R.37.

The respondents' operations during other fishing seasons and in other fishing areas differ from the above description only in that the freezer ship anchors closer to shore and receives fish within the three-mile limit. R. 40.[9]

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[7] In the 1951 season only, Pacific Queen employed the "air-blast" method of freezing.

[8] The number of fish obtained by these other methods is not contained in this record.

[9] In its first opinion, later withdrawn by the Court *en banc*, a panel of the Court of Appeals apparently held that part of Bristol Bay east of a line drawn from Protection Point (the western entrance of Nushagak Bay) to Egigik (on the north shore of Alaska Peninsula), within the territorial waters of Alaska (See App. E to Pet. Br.). The record does

At the conclusion of their operations, respondents' vessels return to Puget Sound, Washington, and discharge their fish. All salmon frozen by the respondents during the years in suit were canned by respondents in the State of Washington prior to further resale. R. 41-42.[10] Each respondent paid Washington Business and Occupation Tax with respect to the canning of their salmon in the State of Washington. Ex. 8, R. 47.

A concise description of the function of freezer ships was given by Petitioner's witness, Thomas Parke, Special Deputy and Enforcement Officer for the Department of Taxation, who testified:

> "The freezer ship is an operation of securing the fish in the bulk and using the hold of the ship in the storage capacity as a raw product to hold them until they can get them to the cannery, or to the plant for processing." R. 301.

It was stipulated in the course of trial, at the request of Petitioner, that respondents ". . . process, your entire operation was canning, is that all right?" Respondents so stipulated. R. 345-346.

The salmon obtained by respondents are not cleaned, gutted, dressed, beheaded, or otherwise processed aboard respondents' vessels. They are frozen "in the round." R. 243, 244. Freezing adds no economic value to the salmon. It is a step which is essential, because of

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not show the number or value of salmon obtained or frozen by respondents while their vessels were west of the line so drawn. There is no support in the record for Petitioner's assertion (Br. 12-13) that most of respondents' freezing activity occurs outside its taxing jurisdiction, if so defined.

[10] With the exception of 500 lbs. sold in a frozen condition by Alaska Reefer in 1952. R. 42.

the perishable character of the salmon, to their preservation for later canning. Alaskan shore canneries avoid freezing "if they possible can," because of the added expense of freezing and later canning. R. 252. Congress requires that salmon be frozen, or preserved in some other manner, "within forty-eight hours after being killed," and makes it unlawful to waste or destroy salmon taken in Alaskan waters. Act of June 26, 1906, Ch. 3547, §§ 7, 8, 34 Stat. 480, as amended, 48 U.S.C. §§ 235, 236. Interstate transportation of salmon is impossible, as well as unlawful, without preservation by freezing or some other method.

Shore canneries and cold storage plants also freeze salmon to preserve them for later canning in Alaska. This occurs during "heavy runs" when the canning capacity of the plant is inadequate for the volume of fish obtained, and also when salmon suitable for canning are received early in the season prior to the opening of the canneries. "Ordinarily that is done throughout Alaska, just merely a storage place for them for the time being." Parke, R. 251-252. "It is a regular occurrence each year. . . ." Pinkerton, R. 245. See also George, R. 247-248.

The comparative impact on Alaska's economy and resources, of canneries and freezer ships is shown in the record by Ex. 17, R. 57. For the six-year period, 1949-1954, inclusive, the total pack of shore canneries exceeded 20 million cases of forty-eight one-pound cans, as compared with the freezer ship production of approximately 380 thousand cases, or less than 2%. Their relative significance to Alaska's revenue is shown by

Exs. 14 and 11, R. 52 and 49, respectively, which show that in the same six-year period Alaska received over $10,100,000 in processing taxes from land-based canneries, as compared with approximately $128,000 in taxes collected and claimed from freezer ships for the same period.

During the years involved in this case, 1951-1954, inclusive, Alaska's salmon fisheries taxation program was embodied in three statutory enactments:

1. Chapter 66, SLA 1949, as amended by Ch. 67, SLA 1953, which required a license for "any person who fishes commercially for, takes or attempts to take salmon, . . .", and imposed a tax of $5.00 on resident fishermen, and $50.00, reduced to $10.00 in 1953, (following the judgment in *Mullaney v. Anderson*, 342 U.S. 415 (1952)), on non-resident fishermen. App. B.

2. Chapter 82, SLA 1949, as amended by Ch. 113, SLA 1951, which required a license for persons prosecuting or attempting to prosecute the line of business of salmon canneries, both shore based and floating, and imposed a tax of 6% of the value of raw fish obtained for canning (increased from 4% in 1951), and a tax of 1% of the value of salmon received and diverted for other purposes. Apps. B and D to Pet. Br.

3. Chapter 97, SLA 1949, as amended by Ch. 116, SLA 1951, which required a license for persons prosecuting or attempting to prosecute the line of business of shore based cold storages, and freezer ships and other floating cold storages, and imposed a tax of 1% of the value of raw fish obtained for processing by

shore based cold storages, and a tax of 4% of such value, on fish obtained for processing by freezer ships and other floating cold storages. App. B; App. C to Pet. Br.

A flat license fee is thus imposed on persons "taking," *i.e.*, catching, salmon. In addition, a license is required, and a tax is imposed upon persons engaged in the processing of salmon, which tax is measured by the value of the raw fish and computed at the rates specified in Chapters 113 and 116, SLA 1951.

Alaska's fisheries tax program with respect to persons who engage in the freezing of salmon has the following impact on the categories of processors affected:

(1) Freezer ships. Taxed at the rate of 4% of the value of raw salmon which they freeze to preserve for later processing by canning in another state. § 1 (b), Ch. 97, SLA 1949, as amended by Ch. 116, SLA 1951.

(2) Salmon canneries and shore based cold storages:

(a) Not taxed with respect to the value of raw salmon which they freeze to preserve for later processing by canning in Alaska.[11] R. 246, 252-253.

(b) Taxed at the rate of 1% of the value of raw salmon which they freeze, but do not later process by canning in Alaska. (Salmon canneries—§ 1 (a) (1) Ch. 82, SLA 1949, as amended by Ch. 113, SLA 1951; Shore cold storages — § 1 (a), Ch. 97, SLA 1949, as amended by Ch. 116, SLA 1951.

[11] Salmon canneries are taxed with respect to the later canning of such salmon. The significance of this tax is discussed in this brief at pp. 31-32, infra.

SUMMARY OF ARGUMENT

I.

The tax is imposed upon the privilege of engaging in interstate commerce in raw salmon. The "incidence" of tax is the freezing and storage of salmon after they have been loaded aboard respondents' vessels for shipment and have entered the flow of interstate commerce. A local privilege tax so laid is forbidden by the Commerce Clause, U.S. Const., Art. I, § 8, Cl. 3.

II.

Alaska taxes freezer ships for the privilege of engaging in activity essential to interstate shipment and later processing of salmon in another state, but imposes no tax upon persons performing the identical activity, if later processing is performed in Alaska. In its practical operation, therefore, the tax works forbidden discrimination against interstate commerce.

III.

Respondents challenge the tax under the Due Process, Equal Protection and Privileges and Immunities clauses of the Constitution. Grave questions are presented under those provisions, if the tax is held not repugnant to the Commerce Clause. If those issues are reached, the cause should be remanded to the Court of Appeals, which has not passed upon the questions thereby presented.

ARGUMENT

I.

Summary

The Tax Is Imposed Upon the Privilege of Engaging in Interstate Commerce in Raw Salmon. The "Incidence" of Tax Is the Freezing and Storage of Salmon After They Have Been Loaded Aboard Respondents' Vessels for Shipment and Have Entered the Flow of Interstate Commerce. A Local Privilege Tax So Laid Is Forbidden by the Commerce Clause, U.S. Const., Art. I, § 8, Cl. 3.

The Incidence of the Tax

The Court of Appeals properly held that Chapter 97, SLA 1949, as amended by Chapter 116, SLA 1951 (hereinafter sometimes called the "Act"), was unconstitutional, as applied to respondents, as imposing a tax upon the privilege of engaging in interstate commerce, and was therefore forbidden by the Commerce Clause, U.S. Const., Art. I, § 8, cl. 3. *The Arctic Maid, et al. v. Territory of Alaska,* 277 F.2d 120; R. 381.

A state may not tax the privilege of engaging in interstate commerce.[12] This is so, whether or not the tax discriminates against such commerce.[13] It is immaterial that the taxpayer has benefited from local expenditures for conservation.[14] Alaska, when a Territory, was

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[12] *Northwestern States Portland Cement Co. v. Minnesota,* 358 U.S. 450, 458 (1959); *Spector Motor Service v. O'Connor,* 340 U.S. 602, 608-610 (1951); *Joseph v. Carter & Weekes S. Co.,* 330 U.S. 422 (1947); *McGoldrick v. Berwind-White Co.,* 309 U.S. 33, 48 (1940).

[13] *Spector Motor Service v. O'Connor,* 340 U.S. 602, 607 (1951); *Joseph v. Carter & Weekes S. Co.,* 330 U.S. 422, 433 (1947).

[14] *Michigan-Wisconsin Pipe Line Co. v. Calvert,* 347 U.S. 157, 163-164.

subject to the same constitutional limitation,[15] as both lower courts have recognized. Petitioner does not contend that it was not.

The threshold question to be resolved in determining whether a state tax is forbidden by the Commerce Clause is that of the "operating incidence" of the tax.[16]

This Court has said, in considering the validity of a state tax attacked on grounds of repugnance to the Commerce Clause:

> ". . . neither the state courts nor the legislatures, by giving the tax a particular name or by use of some form of words, can take away our duty to consider its nature and effect, . . . in which inquiry we are concerned only with its practical operation . . ." *Railway Express Agency, Inc. v. Virginia,* 347 U.S. 359, 363 (1954).

The Court of Appeals held that ". . . it is the freezer ship activity of processing through freezing which is taxed." 277 F.2d 120, 126; R. 388.[17] While petitioner's

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[15] Act of August 24, 1912, c. 387, § 3, 37 STAT. 512, 48 U.S.C. 923; *Anderson v. Mullaney,* 191 F.2d 123 (9th Cir. 1951); affirmed sub nom; *Mullaney v. Anderson,* 342 U.S. 415 (1952).

[16] "For constitutional purposes the decisive issue turns on the operating incidence of a challenged tax." *Wisconsin v. J. C. Penney Co.,* 311 U.S. 435, 444 (1940);

"In passing upon the validity of a state tax challenged under the Commerce Clause, we first look to the 'operating incidence' of the tax." *Memphis Steam Laundry Cleaner, Inc. v. Stone,* 342 U.S. 389, 391 (1952).

[17] The Court below pointed out that if the tax were intended to include such extraterritorial activity as the movement of freezer ships to and from the fishing grounds, the tax would be invalid under the Due Process Clause of the Fifth and Fourteenth Amendments. 277 F.2d 120, 125; R. 387.

position as to the incidence of the tax is not clear to respondents, the contention that it is the taking of fish cannot be supported under any reasonable construction of the Act read alone or in conjunction with the other relevant Alaskan statutes and is, moreover, inconsistent with the administrative construction placed on the Act and its sister statute by petitioner itself.[18]

Section 1 (b) of Chapter 97, SLA 1949, as amended by Chapter 116, SLA 1951, imposes the requirement of a license for, and levies a tax on, the prosecution of the line of business of freezer ships and floating cold storages. The measure of the tax is the value of the fish "bought or otherwise obtained for processing through freezing." The statute recognizes and the record shows that freezer ships load, freeze, store, transport, can and market salmon which they do not catch, but purchase from independent fishermen. If the taxable incident were the taking of fish, respondents would not be subject to tax with respect to salmon which they did not take, yet petitioner contends here, and has always contended, that respondents are taxable with respect to all fish frozen by them, without regard to where, or by whom, they were caught.

In fact, Alaska levies and collects taxes, under Section 1 (a) of the Act, from shore based cold storages, while the record shows without dispute that shore

[18] On page 10 of its brief petitioner states: "A freezer ship is engaged in the business of freezer ship only when and to the extent that it freezes the fish it obtains. Only activities involved in the freezing and storage of fish are taxed under Sec. 1(b) of Ch. 97, SLA 1949, as amended." However, on page 11 and following of its brief petitioner seems to argue that "the taxable incident" is the taking of the fish.

based cold storage plants purchase all their fish from independent fishermen, do not operate their own vessels and thus "take" no fish. George, R. 335-336; Parke, R. 305-306.[19]

Petitioner in fact later argues that ". . . Alaska has seen fit to place the tax burden on fish processors and not on the fishermen," (Br. 23); that it would be politically unpalatable for the Alaska legislature to shift ". . . its fish taxes from the operations of the processors to the taking of fish by the fishermen . . ." (Br. 24-25). How can it be heard at the same time to contend that the Act, as to freezer ships, taxes the taking of the fish?[20] Alaska should not be permitted to thus escape the illogic of its position. As the Court of Appeals pointed out, if Alaska taxes the catching of fish only by use of boats owned by or operated for freezer ships, "a grave due process question would be presented."[21]

The same Alaska legislature which enacted Chapter 97, SLA 1949 also passed Chapter 66, SLA 1949, § 1, which imposed a requirement of a license, conditioned upon payment of a license fee, on "anyone who fishes commercially for, takes or attempts to take salmon

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[19] As the Court of Appeals opinion pointed out, shore based cold storages freeze fish caught on the high seas. 277 F.2d 120, 126; R. 389 (f.n. 8).

[20] Respondents invite the Court's attention to Ch. 190, SLA 1959, in which the Legislature attempted to do what petitioner states it could not because of the unpopularity among the persons to be taxed; i.e., it purports to impose the tax set forth in Ch. 97, SLA 1949, as amended, on any person taking fisheries products enumerated therein who sells to freezer ships outside the taxing jurisdiction of Alaska.

[21] 277 F.2d 120, 126; R. 389 (f.n. 9).

. . ." By that Act[22] and subsequent legislation, including Chapter 190, SLA 1959, f.n. 20, *supra*, the legislature demonstrated that it knew how to frame a license or privilege tax, the incidence of which would be the taking of fish and that it clearly intended, as the Court below held, that Chapter 97, like Chapter 82, SLA 1949, would require a license for and impose a tax on the processing, not the catching, of fisheries products.

Petitioner's brief urges, at pp. 14-23, that the Act imposes a "severance" tax. At page 24, however, petitioner recognizes that a tax laid on the severance or catching of fish by freezer ships only would be unconstitutional, and goes on to explain that, because of political considerations, the legislature cannot impose a tax on the taking of all fish caught in Alaskan waters. Respondents submit that petitioner thus admits that Chapter 97, SLA 1949, as amended, is not a severance tax, and that neither shore canneries nor shore based cold storage plants are taxed on the taking or severance of fish.

It is clear, as the Court of Appeals held, "that the only tax incident defined in Chapter 116 is the freezing and cold storage of fish aboard freezer ships." It then assumed, without deciding, that this activity occurred within Alaska. 277 F.2d 120, 126; R. 390.

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[22] Held unconstitutional as to nonresident fishermen as violative of the Commerce Clause by the Court of Appeals for the Ninth Circuit in *Anderson v. Mullaney*, 191 F.2d 123, and by this Court on certiorari, as violative of the Privileges and Immunities clause. *Mullaney v. Anderson*, 342 U.S. 415 (1952).

Respondents' Activity Is An Integral Part of Interstate Commerce

The Court of Appeals properly held that respondents' activity of freezing and storing salmon is an integral part of interstate commerce, and that a privilege tax imposed thereon is forbidden by the Commerce Clause. Freezing and cold storage are essential to interstate transportation of raw salmon, and are performed after the salmon have been loaded aboard vessels for interstate shipment. 277 F.2d 120, 127-128; R. 390-393.

This Court has held that a local activity which is not susceptible of realistic separation from interstate commerce[23] or which is essential to interstate transportation, which begins, at the least, with loading,[24] may not be carved out and made the fulcrum of a local privilege tax.

Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U.S. 157 (1954) presented facts closely parallel to those in the case at bar, and respondents submit that it is controlling here. In that case a Texas statute levied a tax upon persons engaged in "gathering gas," measured by the entire volume of gas "taken." The taxpayer was a natural gas company which purchased gas from a Texas producer, transported it through its own pipeline facilities, which extended from Texas to Michigan and Wisconsin, and sold it to distribution compa-

[23] *Michigan-Wisconsin Pipe Line Co. v. Calvert*, 347 U.S. 157 (1954); *Nippert v. Richmond*, 327 U.S. 416 (1946).

[24] *Joseph v. Carter & Weekes S. Co.*, 330 U.S. 422 (1947); *Puget Sound Stevedoring Co. v. Tax Commission*, 302 U.S. 90 (1937).

nies for resale to consumers in those states, as well as Missouri and Iowa. The taxable incident was held to be the taking of gas from the outlet of the independent producer within the state. The gas was metered at the junction of the producer's pipes with those of the taxpayer. The taxpayer then compressed, cooled, scrubbed and dehydrated the gas as it flowed through its compressor station, from which it passed into a single smaller pipeline on its way to markets outside Texas. This Court, in an opinion by Mr. Justice Clark, stated the issue thus presented, as follows:

> "The problem in this case is not whether the State could tax the actual gathering of all gas whether transported in interstate commerce or not, . . ., but whether here the State has delayed the incidence of the tax beyond the step where production and processing have ceased and transmission in interstate commerce has begun." 347 U.S. 157, 166-167 (1954).

This Court held unanimously that the taking of the gas into the taxpayer's pipeline could not be separated from the transmission, to form the basis for a local privilege tax:

> "This economic process is inherently unsusceptible of division into a distinct local activity capable of forming the basis for the tax here imposed, on the one hand, and a separate movement in commerce, on the other." 347 U.S. 157, 167 (1954).

The Court added that to permit state taxation of the receipt or first taking of the gas into the pipeline by the state of origin would equally sanction such tax as to

the first taking or unloading by the recipient states, and the states through which the pipeline was laid:

> "The net effect would be substantially to resurrect the customs barriers which the Commerce Clause was designed to eliminate." 347 U.S. 157, 170 (1954).

The tax was therefore repugnant to the Commerce Clause upon the additional ground that it would "permit a multiple burden upon that commerce" (347 U.S. at 170) contrary to the doctrine of *Joseph v. Carter & Weekes S. Co.*, 330 U.S. 424, 429 (1947); *Gwin, White & Prince v. Henneford*, 305 U.S. 434, 439 (1939).

In *Joseph v. Carter & Weekes S. Co.*, 330 U.S. 422 (1947), New York City sought to impose a privilege tax upon gross receipts from the taxpayers' stevedoring business, which consisted of "taking freight from a convenient place on the pier or lighter wholly within the territorial limits of New York City and storing it properly for safety and for handling in or on the outgoing vessel alongside, or of similarly unloading a vessel on its arrival." 330 U.S. at 424-425.

The Court found significance in the fact that:

> "Loading and unloading has effect on transportation outside the taxing state because those activities are not only preliminary to but are an essential part of the safety and convenience of the transportation itself." 330 U.S. 422, 427-428 (1947).

The opinion distinguished previous decisions relied on by New York, in which local taxes were sustained against attack under the Commerce Clause, as based upon the existence of a "definite separation between

the taxable event and the commerce itself." 330 U.S. at 433. Those cases were inapplicable because "transportation in commerce, at the least, begins with loading and ends with unloading." 330 U.S. at 427.

Here, as in *Michigan-Wisconsin*, and *Carter & Weekes*, no such separation can be made. Freezing and storage of the salmon are, of course, as essential to, and as much a part of, interstate transportation as are loading and unloading. In fact freezing, since it does not occur until loading is completed, is more a part of the transportation than is loading.[25]

The teaching of the cases relied on by the court below, and by respondents here, is that activity thus closely related to interstate transportation may not be singled out for the imposition of a state privilege tax, both because the state has no power to withhold or condition the privilege of engaging in interstate commerce, and because such commerce would be exposed to the multiple burden of taxation in each state which could show some jurisdictional basis for asserting a tax.

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[25] Restaurant facilities for the serving of meals to interstate passengers were held an essential and necessary part of a bus carrier's interstate transportation at this term of the Court. *Boynton v. Virginia*, ... U.S. ....., 5 L.Ed. 2d(Adv.) 206 (Dec. 5, 1960); In *Crenshaw Bros. v. Southern Pacific Co.*, 40 Cal. App. 603, 181 Pac. 252, claim was made against a carrier for damage allegedly resulting from imperfect refrigeration of shipments of grapes. The shippers argued that a valuation clause permitted by the Carmack Amendment to the Interstate Commerce Act was not applicable to a claim based upon improper refrigeration, where a separate and distinct charge was made for refrigeration. The court rejected the contention, stating:

> "The charge was distinct, but the refrigeration itself was inseparably connected with the transportation of the fruit, and was an essential part of the transaction." 181 Pac. at 254.

The "Severance" Tax Cases Are Inapplicable

Petitioner relies chiefly on *Oliver Iron Mining Co. v. Lord,* 262 U.S. 172 (1923), and *Toomer v. Witsell,* 334 U.S. 385 (1948). *Oliver* holds that a non-discriminatory state occupation tax levied on persons engaged in the business of mining or producing iron ore is valid and collectible as applied to a taxpayer mining or producing ore within the state, where all but a small fraction of the taxpayer's production is promptly shipped out of the state. In *Toomer v. Witsell,* 334 U.S. 385 (1948) this Court held valid § 3374, S.C. Code Ann., which imposed a non-discriminatory poundage tax of 1/8¢ per pound on shrimp taken in South Carolina waters.[26]

Respondents have no quarrel with the holding of those cases. They simply are not in point here, for Alaska, as petitioner states in its brief, pp. 24-25, has not chosen to tax the catching of fish. Alaska can, if it sees fit, impose a non-discriminatory local privilege tax on the activity of taking fish in its waters, as the Court of Appeals recognized. 277 F.2d 120, 128; R. 393. But petitioner says Alaska cannot enact such a tax, although for political, not constitutional, reasons.

As did the state in *Michigan-Wisconsin Pipe Line Co. v. Calvert,* 347 U.S. 157 (1954), Alaska here has delayed the incidence of the tax beyond the step where interstate commerce has begun, and the authorities

[26] *Toomer* also involved challenges to two other provisions of South Carolina law, § §3379 and 3414, S.C. Code Ann. This Court held the former violative of the Privileges & Immunities Clause, and the latter violative of the Commerce Clause. The holding as to § 3414 is discussed in the next portion of this brief.

concerned with "taking," "extraction," or "severance" are not in point.

II.

Alaska Taxes Freezer Ships for the Privilege of Engaging in Activity Essential to Interstate Shipment and Later Processing of Salmon in Another State, but Imposes No Tax Upon Persons Performing the Identical Activity, if Later Processing Is Performed in Alaska. In Its Practical Operation, Therefore, the Tax Works Forbidden Discrimination Against Interstate Commerce.

Respondents Are Engaged In Interstate Commerce

Having determined the Act sought to tax an activity which is an integral part of interstate commerce, the Court of Appeals was not required to reach respondents' second contention under the Commerce Clause:

> "... that the statute as enacted and administered, discriminates against the interstate transportation of salmon caught in Alaskan waters for canning outside of Alaska and in favor of the canning of such salmon within Alaska." 277 F.2d 120, 125; R. 387.

If this Court should determine that the tax is imposed on the taking of fish, or that the freezing and storage activity of respondents is not an integral part of interstate commerce, the question of whether the tax discriminates against interstate commerce in raw salmon must then be resolved. The facts are not in dispute and the applicable legal principles are not subject to dispute.

This Court has said:

> "But the choice of a local incident for the tax,

> without more, is not enough. There are always convenient local incidents in every interstate operation . . . where there is a state exaction for some interstate privilege that discriminates against interstate commerce, it is invalid even though it is sufficiently disconnected from the commerce to be taxable otherwise." *Memphis Natural Gas Co. v. Stone*, 335 U.S. 80, 87 (1948).

Respondents' business of acquiring, loading, freezing, storing, canning and marketing salmon, which encompasses activity in Alaska and Washington, as well as on the high seas, is plainly interstate commerce.

The record in this case establishes, as did the record in *Anderson v. Mullaney*, 191 F.2d 123 (1951), aff'd *sub nom Mullaney v. Anderson*, 342 U.S. 415 (1952), that Alaska's fisheries ".... are in the center of a great interstate movement which begins when the fishermen start north to fish and terminates with the delivery of the processed product to the dealers in the states. The catching of the fish is but an interlude in this large flow of commerce." 191 F.2d at 127.

In that case, the Court of Appeals for the Ninth Circuit held that Chapter 66, SLA 1949, which imposed a license tax of $5.00 upon resident fishermen, as compared to a tax of $50.00 on non-resident fishermen, discriminated against the interstate movement of fishermen and was prohibited by the Commerce Clause. It recognized that the taking of fish—the taxable event in that instance—occurred before interstate commerce could be said to have begun but ruled that ". . . if the tax in its practical operation has a discriminatory im-

pact upon some aspect of interstate commerce, the local tax cannot be sustained by simply tying it to a local incident." 191 F.2d at 129. The discrimination in that case was directed against the interstate movement of fishermen. In this case, the commerce affected is the interstate movement of raw salmon for processing in another state, as well as the interstate movement of vessels and fishermen.[27]

The Act Discriminates Against Interstate Commerce

Alaska's fisheries taxation program with respect to persons engaged in the freezing of salmon discriminates against the shipment of raw salmon out of Alaska prior to final processing. As pointed out on page 13, *supra*, a tax of 4% of the value of the salmon frozen for later canning in another state is imposed upon freezer ships while no tax is imposed upon canneries and shore-based cold storages with respect to salmon frozen for later canning in Alaska.[28]

It is patent that the statutory scheme is one of discrimination against the preservation of salmon by freezing for later processing in another state, in order to encourage and promote local processing, and that the necessary effect is to discourage, hamper and burden

[27] The Court of Appeals also indicated that, but for a prior holding of this Court, it would also have invalidated the tax as violating the Privileges and Immunities Clause as well. This Court granted certiorari and affirmed, holding that the Privileges and Immunities Clause did apply to Alaska, thus overruling a prior decision and invalidated Ch. 66, SLA 1949 as violating that clause. 342 U.S. 415 (1952).

[28] And a tax of only 1% of the value of the fish is imposed upon canneries and shore based cold storages, with respect to the freezing of fish which are not later canned in Alaska.

such preservation, shipment and out-of-state processing.

That the operation and effect of its tax program was hostile to interstate shipment of salmon prior to final processing was virtually conceded by petitioner. When it was interrogated, petitioner asserted that, among the differences between freezer ships and "land-based" fish processors which were claimed to support their separate classification for tax purposes, were the fact that freezer ships imported employees, supplies, and equipment, thereby depriving local residents of employment and local business of revenue, and stated as follows:

> "If all of the fish frozen aboard freezer ships were canned or processed in Alaska, instead of the States, it would require a sizeable industry to care for them aside from the fact that the Territory would collect about twice the tax that the freezer ships are now paying." R. 257-260.

Alaska's tax program is to be compared with the state legislation condemned in *Foster-Fountain Packing Co. v. Haydel*, 278 U. S. 1 (1928) and *Toomer v. Witsell*, 334 U. S. 385 (1948), where Louisiana and South Carolina, respectively, sought, for similar reasons, to prohibit or discriminate against out-of-state processing of fisheries products taken within the state.

In the *Foster-Fountain* case Louisiana enacted a statute which prohibited the export from the state of shrimp from which the heads and hulls had not been removed, but permitted export of shrimp products after processing within the state. This Court held that:

"As to such shrimp, the protection of the commerce clause attaches at the time of the taking." 278 U.S. at 13.

"The purpose . . . [of the enactment] . . . is to favor the canning of the meat and the manufacture of bran in Louisiana by withholding raw or unshelled shrimp from the Biloxi plants." 278 U.S. at 13.

The Court concluded:

"If the facts are substantially as claimed by plaintiffs, the practical operation and effect of the provisions complained of will be directly to obstruct and burden interstate commerce." 278 U. S. at 13.

In the *Toomer* case, South Carolina required, (by § 3414, S. C. Code Ann.) that vessels licensed to trawl for shrimp in its waters dock at a South Carolina port and unload, pack and stamp their catch before shipment or transportation to other states. This Court held that provision violated the Commerce Clause because: "The necessary tendency of the statute is to impose an artificial rigidity on the economic pattern of the industry" (334 U. S. at 403-404) by diverting to South Carolina employment and business which might otherwise go to Georgia.

In the *Foster-Fountain* case the restriction on interstate shipment of unprocessed shrimp was absolute; in the *Toomer* case, the statute imposed a burdensome regulation which discouraged interstate shipment of the raw product by adding to its cost. Here the statutory scheme seeks to discourage interstate shipment of raw

salmon prior to canning, by use of the taxing, rather than the police power. It is well settled that a legislature may not exercise the tax power to accomplish an otherwise forbidden purpose.

> ". . . The commerce clause . . . by its own force created an area of trade free from interference by the states . . . A state is also precluded from taking any action which may fairly be deemed to have the effect of impeding the free flow of trade between states.
>
> "These principles of limitation on state power apply to all state policy no matter what state interest gives rise to its legislation. A burden on interstate commerce is none the lighter and no less objectionable because it is imposed by a state under the taxing power, rather than under manifestation of police power in the conventional sense . . . The power to tax is a dominant power over commerce because the greater or more threatening burden of a direct tax on commerce is coupled with the lesser need to a state of a particular source of revenue. Attempts at such taxation have always been more carefully scrutinized and more consistently resisted than police power regulations of aspects of such commerce." *Freeman v. Hewit,* 329 U. S. 249, 252-253.

This case follows closely the pattern of the *Foster-Fountain* and *Toomer* cases. They establish that the Commerce Clause protects interstate shipment of raw products for processing in other states. It prohibits embargo, burdensome regulation, and discriminatory taxation alike.

In *Memphis Steam Laundry Cleaner, Inc. v. Stone,*

342 U.S. 389 (1952) this Court held unconstitutional a Mississippi statute which imposed a license tax of $50.00 per vehicle upon persons soliciting business for laundries not licensed in Mississippi as compared with a license tax, imposed under another statute, of $8.00 per vehicle upon persons operating laundries licensed in Mississippi. On the assumption that the tax was imposed on the Mississippi activity of pick-up and delivery, the Court held that state taxation of local activity was permissible "only where no discrimination against interstate commerce appears either upon the face of the tax laws or in their practical operation." This tax was invalid because it ". . . . made the Mississippi state line into a local obstruction to the flow of interstate commerce that cannot stand under the Commerce Clause." (342 U.S. at 395.)

The parallel is obvious, but here the discrimination is more severe. A taxpayer who obtains and freezes salmon for later canning in Alaska will pay no tax with respect to the activity of freezing the salmon in Alaska, while a taxpayer who obtains and freezes salmon for later canning in another state must pay a tax of 4% of its value with respect to the same activity.

The fact that Alaska taxes local canneries for the privilege of canning salmon at the rate of 6% of the value of the raw fish (Chapter 82, SLA 1949 as amended by Chapter 113, SLA 1951) is irrelevant.

> "It may commend itself to a State to encourage a pastoral instead of an industrial society. That is its concern and its privilege. But to compare a State's treatment of its local trade with the exer-

tion of its authority against commerce in the national domain is to compare incomparables." *Freeman v. Hewit*, 329 U.S. 249, 252 (1946).

"While a state, in some circumstances, may by taxation suppress or curtail one type of intrastate business to the advantage of another type of competing business which is left untaxed, . . . it does not follow that interstate commerce may be similarly affected by the practical operation of a state taxing statute." *McGoldrick v. Berwind-White Coal Min. Co.*, 309 U.S. 33, 56 (1940).

The apparent thrust of this argument is that since respondents are essentially producers of canned, rather than fresh frozen salmon, they cannot complain of an Alaskan tax which taxes them less heavily than Alaska taxes local canners. The contention ignores the fact that respondents can in Washington and pay its Business and Occupation Tax for so doing.

This Court has many times held that a tax on the intrastate portion of an interstate enterprise must be imposed solely on account of the intrastate activity, and its amount may not be increased because of the interstate activity.[29]

Alaska, by taxing the freezing of salmon only where preliminary to out-of-state canning, while leaving untaxed the freezing of salmon where preliminary to local canning, has attempted to benefit local enterprise at the expense of interstate commerce.

The contention that a tax so laid is not repugnant to

[29] *Cooney v. Mountain States T. & T. Co.*, 294 U.S. 384, 392-393 (1935); *East Ohio Gas Co. v. Tax Commission*, 283 U.S. 465, 470 (1931); *Sprout v. South Bend*, 277 U.S. 163, 171 (1928).

the Commerce Clause is best answered in the language of this Court, in *Best & Co. v. Maxwell,* 311 U.S. 454, 455-456 (1940):

> "'The commerce clause forbids discrimination, whether forthright or ingenious. In each case it is our duty to determine whether the statute under attack, whatever its name may be, will in its practical operation work discrimination against interstate commerce'."

The standards established by this Court condemn the tax at bar.

III.

Summary

Respondents Challenge the Tax Under the Due Process, Equal Protection and Privileges and Immunities Clauses of the Constitution. Grave Questions Are Presented Under Those Provisions, If the Tax Is Held Not Repugnant to the Commerce Clause. If Those Issues Are Reached, the Cause Should Be Remanded to the Court of Appeals, Which Has Not Passed Upon the Questions Thereby Presented.

Other Constitutional Issues

Respondents challenged the constitutionality of application of Chapter 97, SLA 1949, as amended, to them, under the Due Process Clauses of the Fifth and Fourteenth Amendments, and the constitutionality of the classification made by Alaska's fisheries taxation program among those engaged in the business of freezing fish, under the Privileges and Immunities Clauses of Article IV, Section 2, and Section 1 of the Fourteenth Amendment, and the Equal Protection Clause of the Fourteenth Amendment. (See, *e.g.,* Answer of Arctic Maid, Second and Fifth Defenses, R. 14, 18.)

The Due Process Clause

Under the Due Process defense, it is respondents' contention that Alaska is here seeking to tax activities of respondents (the receipt of freezing of fish and subsequent operations) carried on outside its borders,[30] which in the case of Bristol Bay are defined by a line drawn parallel to and at a distance of three miles seaward from mean low tide-mark on the coastline of Alaska.[31]

The District Court recognized that most of respondents' freezing was carried on outside the territorial waters of Alaska, but held that respondents were nevertheless taxable, because the fish so frozen were caught inside such waters. 140 F.Supp. 190, 195; R. 60, 64-65.

The Classification Defense

Respondents also contend that the classification made by Alaska among those engaged in the freezing of salmon, discussed in detail at pp. 13, 27, *supra,* of this brief, is unconstitutional.

Legislative classification, attacked under the Equal Protection or Privileges and Immunities provisions of the Constitution, must rest upon some ground of dif-

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[30] *Safe Deposit & Trust Company v. Virginia*, 280 U.S. 83, 93 (1929): "A statute of a state which undertakes to tax things wholly beyond her jurisdiction or control conflicts with the Fourteenth Amendment."

[31] *Cunard Steamship Co. v. Mellon*, 262 U.S. 100 (1923); See also "Freedom of the Seas; The Present State of International Law," by Oscar R. Houston, 42 ABAJ 235 (1956).

ference having a fair and substantial relation to a permissible object of legislation.[32]

This constitutional issue arises against the background of The White Act, *supra*, p. 4, which has been held to negative "both Territorial proprietorship, and Territorial power to regulate fisheries,[33] and guarantee to citizens the right to take and preserve fish on a basis of substantial equality.[34]

In this case, Alaska did not establish that reasonable relation between the higher tax rate of 4% imposed upon respondents' Alaskan activity, as compared with the 1% rate imposed upon shore cold storage plants, and the absence of any tax upon freezing for later canning by Alaska canneries, and the higher cost of enforcement which this Court found to be required under the Privileges and Immunities clause in *Mullaney v. Anderson*, 342 U.S. 415, 418 (1952).[35]

Suggested Treatment

Respondents believe, as did the Court of Appeals, that this case should be decided under the Commerce

[32] *Roysier Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920); *Metropolitan Casualty Insurance Co. v. Brownell*, 294 U.S. 580, 583 (1935): "The ultimate test of validity is not whether foreign corporations differ from domestic, but whether the differences between them are pertinent to the object with respect to which the classification is made."

[33] *Anderson v. Mullaney*, 191 F.2d 123, 132 (9th Cir. 1951) affirmed 342 U.S. 415 (1952).

[34] *P. E. Harris & Co. v. Mullaney*, 87 F. Supp. 248, 253 (D. C. Alaska, 1949).

[35] The evidence was that Alaska spent $50 in 1949 and $100 in 1950 (prior to the quadrupling of the tax rate on freezer ships by Chapter 116, SLA 1951) above routine office expenses in the attempted enforcement of the tax on freezer ships. R. 255-257.

Clause, and that the Court need not reach the other issues raised and preserved by them. If, however, this Court's consideration of the Commerce Clause does not dispose of the case, respondents join with petitioner's request that the cause be remanded to the Court of Appeals for the determination of other issues.

CONCLUSION

Respondents urge the Court to affirm the judgments of the court below, R. 393-398. To do otherwise, "would be substantially to resurrect the customs barriers which the Commerce Clause was designed to eliminate." *Michigan-Wisconsin Pipe Line Co. v. Calvert,* 347 U.S. 157, 170 (1954).

Respectfully submitted,

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APPENDIX A

Chapter 97, SLA 1949:

AN ACT

Imposing license taxes upon certain business in Alaska's commercial fisheries; providing license requirements, defining violations, prescribing penalties, and declaring an emergency.

Be it enacted by the Legislature of the Territory of Alaska:

Section 1. BUSINESSES IN ALASKA FISHERIES REQUIRING LICENSES: AMOUNTS THEREOF. Any person, firm or corporation prosecuting or attempting to prosecute any of the following lines of business in connection with Alaska's commercial fisheries shall first apply for and obtain, on the conditions hereinafter set forth, a license so to do on the basis of the following licenses [license] taxes which are hereby levied:

(a) Cold storage and other fish processors, except salmon canneries, herring processing plants, crab canneries and clam canneries otherwise licensed: An annual license tax equal to 1% of the value of the raw halibut, halibut livers and viscera, salmon and bottom fish, shellfish or other fishing resource bought or otherwise obtained for processing through freezing, salting or other method. The value of the raw material under this license shall be the actual price paid for same including indirect considerations such as fuel or supplies furnished by the processor or offsets to the cash value for gear furnished etc. Such value shall apply to the raw material herein mentioned which is procured in company owned or subsidized boats operated by employees of the processor under lease or other arrangement.

Section 2. APPLICATION FOR AND ISSUANCE OF LICENSES: PAYMENT OF TAX. During any year, including the year 1949, before engaging in any business mentioned in Section 1 of this Act, application so to do must first be filed with the Tax Commissioner accompanied by an initial fee of $25.00. A separate initial fee shall be required for each plant specified in the application to be covered by the license. In such application, which may be made upon forms furnished by the Tax Commissioner, the applicant shall state his or her name, the line of business to be licensed, place or places where said business is to be carried on and such other facts as the Tax Commissioner prescribes. The applicant shall also state that he agrees to pay the license tax and will make a true return and will pay to the Tax Commissioner such tax on or before the fifteenth of the next ensuing January. Upon the receipt of the application in proper form accompanied by the initial fee, the Tax Commissioner shall issue the license as of the date the application is filed or mailed, and the applicant may carry on the business from and after the date the application was actually made.

Section 3. TAXPAYER'S DUTY AS TO RETURNS, RECORDS, STATEMENTS, ETC.: TIME TO PAY TAX: TAX COMMISSIONER'S RETURN. The requirements for making returns, the time and place for payment of tax, and the obligation to keep records and make same available to the Tax Commissioner shall be the same as prescribed in the business license tax law for salmon canneries.

Section 4. VIOLATIONS AND PENALTIES, ETC. Any violation of this Act or the rules and regulations issued hereunder shall be a misdemeanor subject to punishment as prescribed in the business license tax law for salmon canneries. Likewise the liability to

file returns and pay interest and deficiency assessments, and the subjection of property to liens shall be the same as prescribed in the license tax law for salmon canneries.

Section 5. SEVERABILITY CLAUSE. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the remainder of the Act and such application to other persons or circumstances shall not be affected thereby.

Section 6. EMERGENCY CLAUSE. An emergency is hereby declared to exist and this Act shall take effect immediately upon its passage and approval.

Approved March 24, 1949.

APPENDIX B

Sections 1 and 2, Chapter 66, SLA 1949:

AN ACT

Pertaining to Fisheries; to provide for the licensing of fishermen in the Territory of Alaska; requiring license fees; defining violations and prescribing penalties; repealing Section 39-41-1 to 39-4-16, inclusive except 39-4-11, Alaska Compiled Laws Annotated, 1949; and declaring an emergency.

Be it enacted by the Legislature of the Territory of Alaska:

Section 1. For the purposes of this Act, "fisherman" shall mean any person who fishes commercially for, takes or attempts to take salmon, halibut, bottom fish, crabs, clams, or other fishery resource of Alaska, and shall include every individual aboard boats operated for fishing purposes who participates directly or indirectly in the taking of the raw fishery products above mentioned whether such participation be on shares or as employee or otherwise. The term "fisherman" shall also include trap watchmen or others engaged in operating fish traps as well as the crews of tenders or other floating equipment used in handling of fish.

Section 2. No person shall become engaged as a fisherman as above defined without first obtaining a license so to do. License fees levied upon fishermen are as follows: Resident fisherman, $5.00; non-resident fishermen, $50.00. Such licenses shall run for one calendar year, and expire on December 31st of each year. For the purposes of this Act, a resident shall be any citizen who has resided in the Territory for 12 months immediately preceding application for such license and shall have been a bone fide inhabitant of Alaska for at least six months during each calendar year thereafter, and

who maintains his place of abode in Alaska. A nonresident is a citizen who has not resided in Alaska for the 12 months immediately preceding application for license or who maintains his principal business or place of abode outside of the Territory. Any person not a citizen of the United States is deemed to be an alien unless he possesses a valid declaration of intention to become such citizen.